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8 STATE OF CALIFORNIA, acting by and through
9 the CALIFORNIA DEPARTMENT OF
10 TRANSPORTATION, and SACRAMENTO
11 REGIONAL TRANSIT DISTRICT

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 STATE OF CALIFORNIA, acting by
15 and through the CALIFORNIA
16 DEPARTMENT OF
17 TRANSPORTATION; and
18 SACRAMENTO REGIONAL
19 TRANSIT DISTRICT,

Plaintiffs,

v.

20 UNITED STATES DEPARTMENT
21 OF LABOR; and THOMAS E.
22 PEREZ, in his capacity as
23 SECRETARY OF UNITED STATES
24 DEPARTMENT OF LABOR,

Defendants.

CASE NO.

**COMPLAINT FOR VIOLATION
OF THE ADMINISTRATIVE
PROCEDURE ACT;
VIOLATION OF THE
CONSTITUTION OF THE
UNITED STATES;
DECLARATORY RELIEF**

25 The State of California, acting by and through the California Department of
26 Transportation ("Caltrans"), and Sacramento Regional Transit District ("SacRTD"
27 and together with Caltrans, "Plaintiffs"), by and through counsel, allege as follows
28 for their Complaint against the United States Department of Labor and Thomas E.
Perez in his capacity as Secretary of the United States Department of Labor
(together, the "Department"):

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this action pursuant to the
Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA"), 28 U.S.C. § 1331,

1 and 28 U.S.C. § 2201.

2 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

3 **SUMMARY**

4 3. Before the Federal Transit Administration (“FTA”) may issue grants to
5 local transit agencies to improve or operate a transit system, federal law requires the
6 Department to certify that fair and equitable labor protection is in place for transit
7 employees. Here, the Department improperly declined to certify critical transit
8 grants on the ground that California’s landmark pension reform law, the California
9 Public Employees’ Pension Reform Act of 2013 (“PEPRA”), diminishes the
10 collective bargaining rights of transit employees. In its determination letters, the
11 Department takes the position that any change in state law affecting a mandatory
12 subject of collective bargaining precludes grant certification, notwithstanding the
13 continued ability of the transit agencies to bargain over pension and retirement
14 issues.

15 4. If allowed to stand, the practical effect of the Department’s conclusion
16 (that PEPRA abridges collective bargaining rights and that the only valid pension
17 changes are those made at the bargaining table) would be to prevent state
18 legislatures from amending any law that affects the employment terms of transit
19 workers. The Department’s decision violates federal law. It will result in the loss of
20 billions of dollars in federal funding to California transit providers and constitutes
21 an arbitrary, capricious, and unconstitutional effort to coerce California to alter a
22 pension reform law adopted for the benefit of California’s citizens and public
23 employees. The Court should invalidate and overturn the Department’s
24 determinations.

25 **NATURE OF THE ACTION**

26 5. This action arises out of the Department’s administration and
27 application of Section 13(c) of the Urban Mass Transportation Act of 1964
28 (“UMTA”), 49 U.S.C. § 1609(c) (1964) (now codified at 49 U.S.C. § 5333(b))

1 (“Section 13(c”).

2 6. Most public employees in California, including employees of transit
3 agencies, have for decades been subject to California’s pension laws. In 2012, the
4 California Legislature enacted, and Governor Edmund G. Brown Jr. signed into
5 law, PEPPRA [AB 340 (Furutani), Stats. 2012, Chapter 296, codified at Calif. Gov’t
6 Code § 7522, *et seq.*]. PEPPRA was designed to reform California’s public employee
7 pension systems and to bring the staggering cost of funding such systems under
8 fiscal control.

9 7. PEPPRA’s primary effect was to amend California’s pension laws as
10 they relate to “new” employees (those hired on or after the law’s January 1, 2013
11 effective date). With respect to new employees, PEPPRA precludes, among other
12 things, a public employer from offering a defined benefit pension plan to new
13 employees that would pose a greater cost or risk than the formula established by the
14 statute. PEPPRA also requires new employees to contribute a specified percentage of
15 the annual cost of the defined benefit plan beginning after the expiration of any
16 existing pre-PEPPRA collective bargaining agreement with inconsistent terms.

17 8. In contrast, for existing (or classic) employees (those individuals who
18 were hired before January 1, 2013), PEPPRA has only limited impact. It does not
19 require any change in the defined benefit plan formula or the employees’ cost-
20 sharing contribution. In this respect, California followed the approach taken by the
21 federal government in 1986, when it reformed the federal pension program for new
22 federal employees, while leaving intact the pension rights of existing employees.

23 9. PEPPRA is intended to protect the fiscal stability of public employee
24 pensions in California and thereby enhance retirement security for public
25 employees. Importantly, PEPPRA does not eliminate collective bargaining over
26 pension issues. Rather, it regulates certain aspects of pension benefits to protect
27 their viability while leaving a wide range of pension and retirement issues for
28 bargaining.

1 10. On September 4, 2013, the Department issued its final determination
2 denying certification under 49 U.S.C. § 5333(b) (a “Section 13(c) certification”) of
3 pending FTA grants for SacRTD. The Department’s denial was based on its
4 conclusion that, “[u]nder PEPRRA, SacRTD cannot comply with the requirements of
5 the [Transit] Act.” Attached hereto as Exhibit A and incorporated by reference
6 herein is a true and accurate copy of the Department’s September 4, 2013 final
7 determination regarding SacRTD grant numbers CA-03-0806-03 and 04.

8 11. The Department issued a similar denial of Section 13(c) certification
9 of a separate grant for Caltrans on September 30, 2013. Attached hereto as Group
10 Exhibit B and incorporated by reference herein are true and accurate copies of (i)
11 the Department’s September 30, 2013 final determination regarding Monterey-
12 Salinas Transit grant number CA-90-Z005-01 and Caltrans grant number CA-90-
13 Z117 and (ii) the Department’s September 30, 2013 final determination regarding
14 Monterey-Salinas Transit grant number CA-03-0823.

15 12. More than eighty California transit agencies, either directly or through
16 another entity, such as Caltrans, depend on federal funding to support their capital
17 projects and operational needs.

18 13. On September 11, 2013, the California legislature passed Assembly
19 Bill No. 1222 (Bloom and Dickinson) (“AB 1222”) which provides a temporary
20 exemption of transit workers’ pension plans from PEPRRA to allow critical work on
21 affected projects to continue pending judicial resolution of the lawfulness of the
22 Department’s determinations denying Section 13(c) certification. The bill reached
23 the Governor’s desk on September 30, 2013 and was signed into law on October 4,
24 2013.

25 14. The exemption expires on the earlier of a judicial ruling that the
26 United States Secretary of Labor, or his or her designee, erred in determining that
27 the application of PEPRRA precludes certification under 49 U.S.C. § 5333(b), or
28 January 1, 2015. The exemption becomes permanent upon a judicial ruling

1 upholding the determination of the United States Secretary of Labor, or his or her
2 designee, that the application of PEPPRA precludes certification under 49 U.S.C. §
3 5333(b).

4 15. With its denials of certification to SacRTD and Caltrans as precedent,
5 and in the absence of AB 1222, Plaintiffs are informed and believe that the
6 Department would have issued certification denials potentially affecting billions of
7 dollars of federal funding for California's transit agencies.

8 16. The Department's current certification denials immediately and
9 directly impact Plaintiffs. SacRTD will not receive much-needed federal funding
10 for its South Sacramento Corridor Phase 2 Light Rail Extension Project. Some of
11 those funds lapsed permanently on October 1, 2013 at the beginning of Federal
12 Fiscal Year 2014, and SacRTD now is unable to obtain that funding from FTA.

13 17. Caltrans likewise will not receive federal funding for Monterey-
14 Salinas Transit's Mobility Management Project. Monterey-Salinas Transit is the
15 only public transit bus operator in Monterey County. It provides fixed-route,
16 demand response, and special seasonal transit service to a 280-square mile area of
17 Monterey County with connections to points in Santa Cruz County, San Luis
18 Obispo County, and Santa Clara County. Through the Mobility Management
19 Project, Monterey-Salinas Transit intends to continue brokering transportation
20 services, incorporate a new elderly and disabled taxi mobility program, and expand
21 current travel training marketing and outreach. The funds sought by Caltrans lapsed
22 permanently on October 1, 2013 at the beginning of Federal Fiscal Year 2014, and
23 Caltrans now is unable to obtain that funding from FTA.

24 18. As a result of the anticipated lapse of FTA grants to several grantees in
25 the State, and to ensure uninterrupted service and avoid layoffs, California passed
26 urgency legislation [AB 1222] to backstop a portion of the lapsed federal funding to
27 California transit agencies with loans from the Public Transportation Account in the
28 State Transportation Fund administered by Caltrans.

1 19. The Department's denials of certification of California transit agency
2 federal transportation grants, and FTA's resulting inability to provide those grants,
3 will impact SacRTD's and other California transit systems' services to their riders
4 (including the transit-dependent, disabled, elderly, and low-income individuals). It
5 will materially and negatively impact essential public transportation services that
6 those riders depend on for work, personal, and recreational use, as well as the
7 ability of transit systems to make capital improvements. It thereby will damage
8 California's economic health, transportation network, environmental quality, and
9 attainment of required air quality standards in its urban areas.

10 20. On information and belief, the Department based its denial of Section
11 13(c) certification for SacRTD's grants, in part, upon its arbitrary and capricious
12 determination, made in excess of its statutory authority, that pension benefits under
13 the existing SacRTD-Amalgamated Transit Union collective bargaining agreement
14 extended to future employees and that PEPPRA therefore reduced existing pension
15 benefit levels for those new employees in violation of Section 13(c)(1). To
16 conclude that PEPPRA impermissibly reduced pension benefits of individuals who
17 were not yet employed by transit agencies, the Department erroneously relied upon
18 federal labor relations law that by its terms does not apply to state or federal public
19 employees and ignored binding legal precedent that state law, not federal law,
20 governs the terms of a pension plan of public employees and the state's authority to
21 change those terms.

22 21. On information and belief, the Department also based its certification
23 denial on the erroneous conclusion that PEPPRA constrained the future collective
24 bargaining rights of California public transit employees over pension and retirement
25 issues in violation of Section 13(c)(2). In so doing, the Department acted in an
26 arbitrary and capricious manner, exceeded its statutory authority, and ignored
27 procedural and substantive requirements established by law.

28 22. On information and belief, the Department based its denial of Section

1 13(c) certification for Caltrans's grant on the same grounds set forth in paragraphs
2 20 and 21 above.

3 23. By its actions, the Department unconstitutionally impaired the fiscal
4 and legislative sovereignty of California.

5 24. On September 30, 2013, the Department issued final determinations
6 denying certification of pending FTA grants for the Santa Clara Valley
7 Transportation Authority, Monterey-Salinas Transit, the Alameda-Contra Costa
8 Transit District, and the Golden Gate Bridge, Highway and Transportation District.
9 On information and belief, the Department's basis for denying certification to these
10 transit agencies is substantially similar to its basis for denying certification of the
11 SacRTD and Caltrans grants.

12 **PARTIES**

13 25. California is a sovereign state and constituent member of the United
14 States.

15 26. Caltrans is an executive department within the State of California,
16 headquartered in Sacramento, California.

17 27. SacRTD is a special regional transit district, authorized by California
18 Public Utilities Code § 102000, *et seq.* and located in Sacramento County,
19 California.

20 28. The United States Department of Labor is the federal government
21 agency responsible for administering Section 13(c).

22 29. Thomas E. Perez is the Secretary of the United States Department of
23 Labor.

24 **BACKGROUND**

25 **The State of California**

26 30. California has a sovereign interest and stake in implementing PEPPRA
27 for California public employees. The California Legislature passed, and Governor
28 Brown signed, PEPPRA to put into operation responsible, comprehensive pension

1 reform for state and local public pension systems that reflects both the needs of
2 public employees and the fiscal circumstances of the State and local governments,
3 as well as California's public transit agencies.

4 31. California's public transit network and operations rely in great part on
5 and would not be self-sustaining without federal funds. The health, safety, and well-
6 being of California residents will be detrimentally affected by the loss of federal
7 grant funds. Mass transit plays a vital role throughout California and affects both
8 local economies and the State economy as a whole. Without federal grant funds,
9 transit agencies will cut service and lay off employees, thereby restraining
10 commerce in the State in a substantial way and affecting the well-being of a large
11 portion of California's residents. If allowed to stand, the Department's
12 determinations will unjustly exclude California and its residents from the benefits
13 that flow from participation in the federal system.

14 32. California already has felt the effects of the Department's
15 determinations. In anticipation of the loss of federal funding, California passed
16 urgency legislation [AB 1222] temporarily exempting transit workers from PEPRA
17 and authorizing cash flow loans from the Public Transportation Account in the
18 State Transportation Fund to impacted local mass transit providers upon request.

19 **Caltrans**

20 33. Pursuant to Cal. Gov't Code § 14030, Caltrans's powers and duties
21 include coordinating and assisting local transit entities in strengthening the
22 development and operation of balanced, integrated mass transportation and
23 developing the full potential of all resources available to meet California's
24 transportation needs, including maximizing the amount of federal funds available to
25 California and increasing the efficiency by which such funds are utilized.

26 34. Caltrans supports public transit in California in a number of ways,
27 including through financial assistance to California's municipal transit agencies and
28 preparation of the State Transportation Improvement Program, which allocates state

1 transportation funds for interregional and regional capital improvement projects.
2 Caltrans also ensures that funds are available for public transit projects by serving
3 as a direct recipient of federal funds under a number of FTA funding programs.
4 Caltrans determines eligible projects for federal funding through a competitive
5 statewide call for projects from eligible local agencies and then submits grants to
6 FTA for the selected projects.

7 35. One project selected by Caltrans for FTA funding was Monterey-
8 Salinas Transit's Mobility Management Project. The Department denied
9 certification of the grant for this project on September 30, 2013 [Group Exhibit B].

10 **SacRTD**

11 36. SacRTD serves a 418-square mile area in Sacramento County,
12 California. SacRTD operates approximately 69 bus routes, 38.6 miles of light rail,
13 50 light rail stations, 33 bus and light rail transfer centers and 18 park-and-ride lots.
14 SacRTD also serves approximately 3,140 bus stops throughout Sacramento County.
15 SacRTD's annual ridership is 27,300,000. SacRTD relies heavily on federal
16 funding from FTA for its capital expenditures, including 50 percent of the costs for
17 the South Sacramento Corridor Phase 2 Project, which is estimated to cost a total of
18 \$270 million.

19 37. SacRTD employs approximately 942 employees, of which 860 are
20 represented employees. The Amalgamated Transit Union, Local Division 256
21 represents 492 of SacRTD's employees in collective bargaining with SacRTD.

22 38. SacRTD has the statutory authority under state law to establish an
23 independent retirement system for its employees. SacRTD also is authorized to
24 establish a pension trust and may make participation in the pension trust plan
25 compulsory for its officers and employees.

26 39. Pursuant to its authority, and through collective bargaining, SacRTD
27 has established a retirement system (a pension plan) for its unionized employees.
28 The pension plan is a traditional defined benefit plan that provides an annual benefit

1 upon retirement, which is determined as a percentage of an employee's final
2 average compensation multiplied by the employee's years of service. SacRTD also
3 provides disability and survivor benefits under the plan. Currently, the plan is
4 funded exclusively through employer contributions and the earnings on plan assets.
5 The plan is qualified under Internal Revenue Code ("I.R.C.") § 401(a) and is a
6 governmental plan within the meaning of I.R.C. § 414(d) and § 3(32) of the
7 Employee Retirement Income Security Act of 1974 ("ERISA"). By the express
8 agreement of the parties, the plan is governed by California state law to the extent
9 not preempted by federal law.

10 40. SacRTD relies heavily on federal funding, including federal
11 discretionary funds under the Section 5309 capital investment program and Section
12 5307 formula funds, to acquire capital assets, support its capital program, construct
13 rail projects, and fund preventive maintenance activities. SacRTD receives these
14 federal funds in the form of grants from FTA.

15 **The Department's Denials of Section 13(c) Certification**

16 41. Under Section 13(c), the Department must certify that the interests of a
17 transit agency's employees are protected under "fair and equitable" arrangements as
18 a condition to the receipt of FTA grants.

19 42. Section 13(c) requires that these employee protective arrangements
20 (generally termed "13(c) Agreements" or "13(c) Arrangements") include provisions
21 that may be necessary for, among other things, "the preservation of rights,
22 privileges, and benefits (including continuation of pension rights and benefits)
23 under existing collective bargaining agreements" and "the continuation of collective
24 bargaining rights" [49 U.S.C. § 5333(b)].

25 43. On November 15, 2012, SacRTD applied for a grant from FTA for
26 funding for the South Sacramento Corridor Phase 2 Project (Extension of South
27 Corridor LRT Service from Meadowview Road to Cosumnes River College). FTA
28 assigned the grant reference number CA-03-0806-03. SacRTD planned to use the

1 requested grant funds as reimbursement for capital expenditures made prior to
2 January 1, 2013.

3 44. On December 12, 2012, the Department's Office of Labor-
4 Management Standards notified SacRTD and the labor organizations representing
5 transit employees in the project's service area of the Department's intent to certify
6 the pending grant on the basis of the existing 1977 13(c) Agreement, as amended,
7 and the 2011 Unified Protective Arrangement, unless the Department received a
8 written objection within 15 calendar days of the referral.

9 45. In its December 12, 2012 referral letter, the Department included the
10 following language in the header (bold emphasis in original):

11 **The Department is aware that the newly enacted Public**
12 **Employees' Pension Reform Act of 2013, AB 340 (Furutani),**
13 **Stats. 2012, Chapter 296 (PEPRA) may affect the ability of**
14 **California recipients to comply with 49 U.S.C. 5333(b)(2)(A)**
15 **& (B), which require the preservation of rights, privileges,**
16 **and benefits (including continuation of pension rights and**
17 **benefits) under existing collective bargaining agreements or**
18 **otherwise and the continuation of collective bargaining**
19 **rights. Grant recipients and unions party to this referral are**
20 **requested to review the requirements of PEPRA, and if**
21 **appropriate, utilize the objections procedures, explained on**
22 **page 2 of this referral, to inform the Department, and each**
23 **other, of any conflicts between PEPRA and 49 U.S.C.**
24 **5333(b)(2)(A) & (B) and/or their protective arrangements.**
25 **The parties to this referral may respond to any objection(s)**
26 **prior to the Department's determination of the sufficiency of**
27 **the objection(s).**

28 The Department included this same boilerplate notice in a letter dated August 15,
2013 regarding the Department's referral of a pending FTA grant application for
Los Angeles County Metropolitan Transportation Authority (grant number CA-95-
X227). On information and belief, the Department included the same or
substantially similar notice language in its referral letters concerning grants to other
California entities.

46. The Amalgamated Transit Union ("ATU") filed an objection to the
Department's referral on December 20, 2012, on the grounds that the enactment of
PEPRA removed or limited certain mandatory and/or traditional subjects of

1 collective bargaining in violation of Section 13(c) requirements.

2 47. SacRTD responded to ATU's objection on December 28, 2012.
3 SacRTD opposed ATU's objection on the ground that PEPPRA did not substantively
4 impact existing collective bargaining agreements or future bargaining, or otherwise
5 eliminate or remove pension issues from bargaining.

6 48. By letter dated January 10, 2013, the Department determined that ATU
7 raised sufficient objections to the Department's referral, stating: "The state law
8 [PEPPRA] appears to have removed mandatory and/or traditional subjects of
9 collective bargaining from the consideration of the parties and may prevent
10 [SacRTD] from continuing the collective bargaining rights of employees, as
11 required by Section 13(c)(2) of the Federal Transit Act, codified as 49 U.S.C.
12 5333(b)(2)(B)."

13 49. The Department directed SacRTD and ATU to engage in good faith
14 negotiations and/or discussions to seek a mutually acceptable resolution of the
15 issues concerning the continuation of collective bargaining.

16 50. Also in the January 10, 2013 letter, the Department notified the parties
17 that it did not anticipate issuing an interim certification within five (5) days of the
18 end of negotiations due to the "substantial possibility that the parties' failure to
19 negotiate a statutorily sufficient resolution to the issues in this matter may render
20 [SacRTD] ineligible for the receipt of Federal funds." This refusal was contrary to
21 the Department's standard practice regarding interim certifications, as set forth in
22 the Department's guidelines [29 C.F.R. Part 215].

23 51. SacRTD and ATU were unable to reach a mutually acceptable
24 resolution of the issues presented in ATU's objection to the referral. Pursuant to the
25 Department's guidelines and the January 11, 2013 letter, SacRTD and ATU filed
26 their separate final proposals with the Department on February 12, 2013.

27 52. In its proposal to ATU, SacRTD identified and offered to bargain over
28 a number of pension issues, including but not limited to the establishment of a new

1 or supplemental defined contribution plan, optional or supplemental retirement
2 benefits for existing and new employees, and addressing pensionable compensation
3 issues. ATU, on the other hand, refused to accept anything less than an agreement
4 that pension benefits would be the same for current and new employees and
5 SacRTD's support in seeking a prompt amendment to PEPRAs exempting transit
6 workers' pension plans from PEPRAs. In support of its final proposal to the
7 Department, ATU argued that "the DOL has already found that PEPRAs presents
8 circumstances that are inconsistent with 49 U.S.C. § 5333(b), as it removes
9 mandatory and/or traditional subjects of bargaining."

10 53. On April 18, 2013, as previewed in the January 10, 2013 letter, the
11 Department did not issue an interim certification for the pending grant.

12 54. Also on April 18, 2013, the Department established a briefing schedule
13 and directed the parties to provide arguments on six enumerated issues.

14 55. The parties filed their initial briefs on May 8, 2013, SacRTD timely
15 filed its reply brief on May 20, 2013, and ATU filed its reply brief on May 21,
16 2013.

17 56. On September 4, 2013, the Department issued its final determination
18 [Exhibit A]. The Department concluded that PEPRAs "makes significant changes to
19 pension benefits that are inconsistent with section 13(c)(1)'s mandate to preserve
20 pension benefits under existing collective bargaining agreements and section
21 13(c)(2)'s mandate to ensure continuation of collective bargaining rights " and
22 denied certification of SacRTD's pending grants.

23 57. The Department found that any restriction of the right to bargain over
24 a mandatory subject of collective bargaining violates Section 13(c).

25 58. The Department acknowledged that nothing in Section 13(c) or other
26 federal law restricts a state's enactment of law regulating the pensions of public
27 employees, but determined that a state must forego federal funding if a state law
28 alters the pension rights of public transit employees in any respect.

1 59. The Department found, contrary to established congressional intent,
2 that federal labor law, rather than state labor law, defines the substantive meaning
3 of the collective bargaining rights that must be continued for purposes of Section
4 13(c) (contrary to federal case law precedent, contrary to the terms of the SacRTD
5 1977 13(c) Agreement, and contrary to the SacRTD pension plan agreement).

6 60. Finally, the Department found that the effect of PEPRAs on new
7 employees precluded SacRTD from preserving the pension benefits under existing
8 collective bargaining agreements and continuing collective bargaining rights as to
9 those new employees, based on decisions under the National Labor Relations Act
10 (which does not apply to public employees) holding that new or future employees
11 are entitled to the pension benefits set forth in collective bargaining agreements in
12 place prior to their obtaining employment. The Department also found that PEPRAs
13 affects the rights of existing employees and prevents SacRTD from creating certain
14 new defined benefit plans for their benefit.

15 61. The Department's conclusions are inconsistent with California law and
16 California's interpretation of PEPRAs, and the Department's interpretations of state
17 law are due no deference. Under California law, PEPRAs' enactment and its
18 application to employees hired after its effective date were a proper exercise of
19 California's power to regulate pensions and did not unlawfully impair the pension
20 benefits or bargaining rights of prospective employees. Similarly, the enactment
21 and implementation of the PEPRAs provisions that affect existing employees were
22 lawful under California law.

23 62. On September 30, 2013, the Department denied Section 13(c)
24 certification for Caltrans's grant application for funds to support Monterey-Salinas
25 Transit's Mobility Management Project (grant number CA-90-Z117) [Group
26 Exhibit B]. The Department referenced its separate September 30, 2013 final
27 determination denying certification for Monterey-Salinas Transit's grant application
28 for grant number CA-03-0823, and stated that "PEPRAs presents identical obstacles

1 to the certification of the [Mobility Management Project] grants for the benefit of
2 [Monterey-Salinas Transit].” The final determination for grant number CA-03-0823
3 contained language and reasoning nearly identical to that in the Department’s final
4 determination for SacRTD.

5 63. On information and belief, in addition to the above described SacRTD
6 and Caltrans grants, the Department has, for over ten months, failed to certify a
7 majority of the grants to California transit agencies, resulting in a total amount of
8 funding withheld of over \$1 billion.

9 64. For the reasons set forth herein, the Department’s determinations and
10 its application of Section 13(c) violated the Administrative Procedure Act and the
11 U.S. Constitution.

12 **FIRST CLAIM**

13 **(Violation of the Administrative Procedure Act--Arbitrary and** 14 **Capricious Agency Action and Agency Action not in Accordance** 15 **with Law)**

16 65. Plaintiffs incorporate each and every allegation contained in
17 paragraphs 1-64, as if fully set forth herein.

18 66. Section 13(c) requires that 13(c) Arrangements include provisions as
19 may be necessary for the continuation of collective bargaining rights.

20 67. Section 13(c) does not disturb the application of state labor law to the
21 relationships between public transit employers and transit employees. It does not
22 prohibit a state from enacting legislation that regulates certain elements of public
23 sector pension benefits while retaining overall bargaining over pension and
24 retirement issues.

25 68. PEPRAs do not remove or eliminate pension or retirement issues as a
26 subject of collective bargaining.

27 69. In its September 4, 2013 decision denying certification of the SacRTD
28 grants [Exhibit A], the Department concluded that PEPRAs “precludes the Union

1 from negotiating many aspects of their pension plans, including the employee
2 contribution rate, in subsequent agreements.”

3 70. The Department reached the same conclusion in its September 30,
4 2013 decision with respect to the Caltrans grant to support Monterey-Salinas
5 Transit’s Mobility Management Project [Group Exhibit B].

6 71. In finding that PEPRa prevented SacRTD from continuing the
7 collective bargaining rights of its union employees, the Department interpreted and
8 applied Section 13(c) far beyond its statutory intent, in a manner fundamentally
9 inconsistent with the section’s legislative history, in conflict with precedential
10 judicial and Department interpretations and application of Section 13(c), and
11 inconsistent with the scope and effect of PEPRa.

12 72. The Department interpreted PEPRa, a state statute, without giving
13 proper deference to the opinions of California’s Secretary of Labor and Workforce
14 Development (supported by legal analysis by the agency’s general counsel)
15 regarding the effects of PEPRa, particularly that California transit agencies have a
16 continued capacity to collectively bargain following PEPRa. By failing to consider
17 and give controlling weight to the opinion of the state on the application and
18 interpretation of the state’s own statute, the Department incorrectly substituted its
19 judgment of state law for that of the state, failed to follow its own precedent of
20 giving state opinions on state statutes controlling weight, and failed to give a
21 reasoned explanation for its departure from prior precedent.

22 73. Upon information and belief, the Department also was inconsistent and
23 disparate in its certification determinations following the enactment of PEPRa,
24 certifying certain agencies’ grants simply because the involved union did not object
25 to, or concurred in, the certification regardless of PEPRa’s applicability to those
26 agencies.

27 74. For these reasons, the Department’s issuance of the denials of
28 certification was arbitrary and capricious.

75. As a result of the Department's action, Plaintiffs face a substantial financial harm. Some of Plaintiffs' grant funds have lapsed, and Plaintiffs now are unable to obtain that funding from FTA. The Department's action prevents California from fully implementing PEPRA, threatening the financial soundness of the pension systems that provide benefits to public transit agency workers and negatively impacting California's economy. In addition, and in the absence of AB 1222, SacRTD, Caltrans, and other California transit agencies would have been denied transportation-related grant funds in the future in excess of \$1 billion because of the Department's incorrect interpretation and application of Section 13(c) in light of PEPRA.

76. Therefore, Plaintiffs are entitled to relief under 5 U.S.C. §§ 702 and 706(2)(A).

SECOND CLAIM

(Violation of the Administrative Procedure Act--Agency Action in Excess of Statutory Authority)

77. Plaintiffs incorporate each and every allegation contained in paragraphs 1-64 and 67, as if fully set forth herein.

78. Section 13(c) requires that 13(c) Arrangements include provisions as may be necessary for the preservation of rights, privileges, and benefits under existing collective bargaining agreements.

79. California labor law applies to the relationship between California public transit employers and their employees. Pursuant to an explicit governing law provision, California law also controls the pension plan agreement covering employees of ATU Local 256.

80. Under California labor law, prospective employees have no vested right to any benefits prior to accepting employment.

81. In its September 4, 2013 decision denying 13(c) certification of the SacRTD grants [Exhibit A], the Department concluded that PEPRA “significantly

1 reduces pension entitlements under the existing collective bargaining agreements
2 for employees hired after January 1, 2013,” the effective date of PEPRA.

3 82. The Department reached the same conclusion in its September 30,
4 2013 decision with respect to the Caltrans grant to support Monterey-Salinas
5 Transit’s Mobility Management Project [Group Exhibit B].

6 83. In finding that future SacRTD employees have pension rights under
7 existing collective bargaining agreements that predate their employment, the
8 Department ignored California labor law, the legislative history of Section 13(c)
9 confirming that state labor law applies to 13(c) Agreements, established precedent
10 regarding the states’ control over public pensions, and the choice of law provision
11 of the pension plan agreement between SacRTD and ATU.

12 84. The Department relied instead on judicial precedent under the National
13 Labor Relations Act, an Act that by its terms does not apply to public employers.

14 85. In so doing, the Department acted in excess of its statutory authority in
15 denying certification of the SacRTD and Caltrans grants.

16 86. As a result of the Department’s action, Plaintiffs face a substantial
17 financial harm. Some of Plaintiffs’ grant funds have lapsed, and Plaintiffs now are
18 unable to obtain that funding from FTA. The Department’s action prevents
19 California from fully implementing PEPRA, threatening the financial soundness of
20 the pension systems that provide benefits to public transit agency workers and
21 negatively impacting California’s economy. In addition, and in the absence of AB
22 1222, SacRTD, Caltrans, and other California transit agencies would have been
23 denied transportation-related grant funds in the future in excess of \$1 billion
24 because of the Department’s incorrect interpretation and application of Section
25 13(c) in light of PEPRA.

26 87. Therefore, Plaintiffs are entitled to relief under 5 U.S.C. §§ 702 and
27 706(2)(C).

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1 **THIRD CLAIM**

2 **(Violation of the Constitution of the United States--Agency Action**
3 **in Violation of the Spending Clause and the Tenth Amendment)**

4 88. Plaintiffs incorporate each and every allegation contained in
5 paragraphs 1-64, 67, and 79-80, as if fully set forth herein.

6 89. The Spending Clause of the Constitution of the United States [U.S.
7 Const. art. I, § 8, cl. 1] provides Congress with the power to “pay the Debts and
8 provide for the ... general Welfare of the United States.” The Spending Clause does
9 not permit attaching conditions to federal grants where the conditions operate
10 primarily to coerce a state into changing its laws in a field Congress generally
11 leaves to state regulation and where the coerced legislative changes are not directly
12 related to the objectives behind the federal grants.

13 90. The Tenth Amendment to the Constitution of the United States [U.S.
14 Const. amend. X] provides: “The powers not delegated to the United States by the
15 Constitution, nor prohibited by it to the States, are reserved to the States
16 respectively, or to the people.”

17 91. The Department’s interpretation and application of Section 13(c) in the
18 wake of the passage and enactment of PEPRA has resulted in the withholding of
19 over \$1 billion in federal grant funds.

20 92. The Department’s interpretation and application of Section 13(c), and
21 in particular its withholding of grant funds, operated primarily to coerce California
22 into changing a public pension reform enactment that California adopted for the
23 benefit of its citizens and public employees.

24 93. The Congress has expressly indicated its intent that the regulation of
25 public pensions be the prerogative of the states.

26 94. The Department presented California with a Hobson’s choice--change
27 its pension reform legislation or forgo over \$1 billion of federal transit funds. The
28 Department left California with no realistic option. By so doing, the Department

1 undermined the independent fiscal and legislative sovereignty of California and
2 interfered with California's exercise of its police powers and prerogative to legislate
3 for the benefit of its citizens in a field Congress has expressly left to state
4 regulation.

5 95. The Department's interpretation and application of Section 13(c) is
6 inconsistent with established limitations on federal power under the Spending
7 Clause because it operates to condition the receipt of federal funds on ambiguous
8 requirements, and the conditions imposed do not directly relate to the objectives of
9 the federal grant program.

10 96. The coercion to change state law regulating public pensions created by
11 the Department's interpretation and application of Section 13(c) exceeds the limits
12 of federal power to secure state compliance with federal conditions under the
13 Congress's spending power in Article I of the Constitution of the United States,
14 violates the Tenth Amendment to the Constitution of the United States, and is
15 contrary to the Constitution's principles of federalism.

16 97. The Department's interpretation and application of Section 13(c) also
17 violates the basic principles of fiscal sovereignty and sovereign control over the
18 public purse. Only California elected officials may spend California's money.
19 Through Section 13(c), however, the Department improperly acted to force
20 California to change its pension reform legislation and improperly interfered with
21 California's control of transit agencies' spending on pensions.

22 98. The Department's interpretation and application of Section 13(c) in
23 violation of Article I of the Constitution of the United States and the Tenth
24 Amendment to the Constitution of the United States is due no deference by this
25 Court.

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1 **FOURTH CLAIM**

2 **(Violation of the Administrative Procedure Act--Agency Action**
3 **with Pre-Judgment Bias and Without Necessary Due Process)**

4 99. Plaintiffs incorporate each and every allegation contained in
5 paragraphs 1-64, 67, and 79-80, as if fully set forth herein.

6 100. On information and belief, the Department determined at the outset of
7 the Section 13(c) certification process, long before the parties briefed the
8 underlying issues, that SacRTD could not meet its Section 13(c) obligations and
9 also comply with PEPRA.

10 101. The Department included bolded language in its referral letter to
11 SacRTD and ATU, and on information and belief in other referral letters issued to
12 California grant recipients, that PEPRA “may affect the ability of California
13 recipients to comply with 49 U.S.C. 5333(b)(2)(A) & (B).”

14 102. The Department stated in a January 10, 2013 letter to SacRTD and
15 ATU that “state law appears to have removed mandatory and/or traditional subjects
16 of collective bargaining from the consideration of the parties and may prevent
17 [SacRTD] from continuing the collective bargaining rights of employees, as
18 required by Section 13(c)(2) of the Federal Transit Act, codified as 49 U.S.C.
19 5333(b)(2)(B).”

20 103. Also in the January 10, 2013 letter, the Department notified the parties
21 that (contrary to its standard practices) it did not anticipate issuing an interim
22 certification within five (5) days of the end of negotiations due to the “substantial
23 possibility that the parties’ failure to negotiate a statutorily sufficient resolution ...
24 may render [SacRTD] ineligible for the receipt of Federal funds.”

25 104. In its presentation of the issues to the parties, the Department
26 instructed SacRTD to support a position that SacRTD did not advance in its
27 response to ATU’s objection to the referral.

28 105. On information and belief, the Department effectively determined that

1 PEPPA conflicted with Section 13(c)'s requirements before SacRTD and ATU
2 submitted the briefs requested by the Department in the subsequent adjudicatory
3 process.

4 106. The Department's prejudgment of both the law and facts had an
5 equally prejudicial effect on the certification process for the Caltrans grant.

6 107. The Department's bias is contrary to SacRTD's and Caltrans's
7 constitutional right to a fair adjudication of the complex facts and legal issues at
8 stake, and denied SacRTD and Caltrans the opportunity for meaningful review of
9 their positions.

10 108. As a result of the Department's action, Plaintiffs face a substantial
11 financial harm. Some of Plaintiffs' grant funds have lapsed, and Plaintiffs now are
12 unable to obtain that funding from FTA. The Department's action prevents
13 California from fully implementing PEPPA, threatening the financial soundness of
14 the pension systems that provide benefits to public transit agency workers and
15 negatively impacting California's economy. In addition, and in the absence of AB
16 1222, SacRTD, Caltrans, and other California transit agencies would have been
17 denied transportation-related grant funds in the future in excess of \$1 billion
18 because of the Department's incorrect interpretation and application of Section
19 13(c) in light of PEPPA.

20 109. Therefore, Plaintiffs are entitled to relief under 5 U.S.C. §§ 702 and
21 706(2)(D).

22 **FIFTH CLAIM**

23 **(Claim for Declaratory Judgment (28 U.S.C. § 2201))**

24 110. Plaintiffs incorporate each and every allegation contained in
25 paragraphs 1-64, 66-75, 78-86, 89-97, and 100-108, as if fully set forth herein.

26 111. There is an actual controversy of sufficient immediacy and
27 concreteness relating to the legal rights and duties of Plaintiffs and their legal
28 relations with the Department to warrant relief under 28 U.S.C. § 2201.

112. The harm to Plaintiffs as a direct result of the Department's actions is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment clarifying the legal relations of the parties.

WHEREFORE, Plaintiffs pray for an order and judgment:

- A. Setting aside the Department's September 4, 2013 determination denying certification of SacRTD grant numbers CA-03-0806-03 and 04;
- B. Setting aside the Department's September 30, 2013 determination denying certification of Caltrans grant number CA-90-Z117;
- C. Declaring that PEPRRA does not impair the ability of SacRTD, or any other California federal grant recipient or subrecipient, to meet its obligations under 49 U.S.C. § 5333(b) and/or to be eligible for federal grant funds;
- D. Declaring that the Department erred in determining that PEPRRA precludes certification under 49 U.S.C. § 5333(b);
- E. Declaring the Department's interpretation and application of 49 U.S.C. § 5333(b) to be in violation of, and unsupported by the Congress's exercise of its powers under, Article I of the Constitution of the United States;
- F. Declaring the Department's interpretation and application of 49 U.S.C. § 5333(b) to be in violation of the Tenth Amendment of the Constitution of the United States; and
- G. Granting such other and further relief as is just and appropriate under the circumstances.

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1 October 4, 2013

THOMPSON COBURN LLP

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3 By: /s/ Mitchell N. Reinis

4 **MITCHELL N. REINIS**

Attorneys for Plaintiffs

5 STATE OF CALIFORNIA, acting by
and through the CALIFORNIA

6 DEPARTMENT OF

7 TRANSPORTATION, and

SACRAMENTO REGIONAL

8 TRANSIT DISTRICT
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